

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DAVID GORDON FLEMING,)	
)	
Petitioner,)	
)	
v.)	1:14-cv-00327-JAW
)	
)	
WARDEN, MAINE STATE PRISON,)	
)	
Respondent)	

RECOMMENDED DECISION ON 28 U.S.C. § 2254 PETITION

In this action, Petitioner David Gordon Fleming, an inmate at the Maine State Prison, seeks relief pursuant to 28 U.S.C. § 2254, alleging that he is in custody in violation of the Constitution. (Petition, ECF No. 1.) Petitioner previously sought relief in this Court pursuant to section 2254. According to this Court's decision in Petitioner's prior section 2254 case, Petitioner was convicted in the Maine Superior Court (York County), after he pled guilty to charges of attempted murder, kidnapping, gross sexual assault, unlawful sexual contact and aggravated assault. *Fleming v. Merrill*, No. 05-93-B-S, 2006 WL 266146, at *1, 2006 U.S. Dist. Lexis 4212, at *1 (D. Me. Feb. 1, 2006) (recommended decision, affirmed Feb. 23, 2006).

Title 28 U.S.C. § 2244 governs second or successive section 2254 petitions. Section 2244(b)(3)(A) states: "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." *See also* First Circuit Local Rule 22.1. The record does not reflect that the First Circuit has authorized this Court to consider the petition. Accordingly, the recommendation is that the petition be dismissed, in accordance with Rule 4 of the Rules Governing Section 2254 Cases, without requiring Respondent to answer.

Conclusion

Based on the foregoing analysis, it is recommended that the Court dismiss the petition. It is further recommended that the Court deny a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2254 Cases, because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 21st day of August, 2014.